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SUPREME COURT  
STATE OF WASHINGTON

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NO. 79971-7

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SUPREME COURT OF THE STATE OF WASHINGTON

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MELANIE MORIN,

*Plaintiff-Appellant,*

v.

CLARENCE HARRELL & HAZEL HARRELL Et Ux. ,

*Defendant-Respondent*

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SUPPLEMENTAL BRIEF OF APPELLANT

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## SUPPLEMENTAL BRIEF OF MELANIE MORIN

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A. The parties are directed to serve and file with this court by not later than May 22, 2007 supplemental briefs that address the following issue and its applicability to this case:

In *Pierce County v. State*, 159 Wn.2d 16, 41, 148 P.3d 1002 (2006) this court held that when a statute is challenged on the basis that the title violated article II, section 19, later reenactment of the statute supersedes and cures any defect in the earlier legislation.

### TABLE OF AUTHORITIES

#### Table of Cases

*Pierce County v. State*, 159 Wn.2d 16, 41, 148 P.3d 1002 (2006)

Page 1, 2, & 3.

*Union Legislative Council v. State*, 145 Wn.2d 544, 40 P. 3d 1276

(2002) Page 2 & 3.

#### Constitutional Provisions

Const. art. II, § 19 Page 1

#### Statutes

SUPPLEMENTAL ARGUMENT

Appellant urges legislative reenactments of RCW 49.46.010, definition of employees, cures any constitutional defects caused, if the court concludes there were constitutional defects in I-518, by failure to include "domestic services workers" in the Ballot Title of I-518. Appellant agrees with Amicus Attorney General, who briefed *Pierce County v. State*, 159 Wn.2d 16, 41, 148 P.3d 1002 (2006). See, Brief of Amicus State of Washington, Pages 12-14. As the Court noted in *Pierce County*, although the issue of legislative reenactment was new, other states also had determined legislative reenactment cured procedural constitutional defects.

Appellant also agrees with the citations and argument presented to this Court by Amicus SEIU Local 775, Brief of same, Pages 3-10. Local 775's Brief persuasively argues for the adoption of the policy announced in *Pierce County*, and it extensively documents the numerous legislative reenactments of the Washington Wage and Hour scheme since passage of I-518. A simple application of the rule in *Pierce County* would dispose of the appeal, reverse the trial court, and let the matter proceed to trial and resolution.

A rule of legislative reenactment as cure, provides a more neutral basis for deciding these cases than just using equity, or worse, further

twisting the bounds of elasticity of the single subject and ballot title rules. In this case, Mr. Harrell has no reason to care at all about the constitutionality of I-518 until he is sued for overtime wages by a caregiver in his employ, and the constitutional status of the statute never troubled him for eighteen years.

Assuming hypothetically Mrs. Harrell became ill years from now, a suit for overtime wages twenty years from now, or thirty-eight years after the passage of I-518, would still be faced down with a just-in-time-discovered unexploded bomb. Due to the needed for ripeness, a court cannot review the issue of how much time is enough before there actually arises a constitutional challenge to settled law everyone has lived with for years. For how many years should this be possible? The *Morin* case has many more years of the unexploded bomb laying in wait than *Pierce County*.

Appellant has urged this Court to decide the case upon grounds of fairness, and she agrees with the well-argued reasoning of Amici regarding *Laches*. Perhaps legislative reenactment is a better way to resolve this appeal because it would cleanly follow a recently announced rule of law in *Pierce County*, and would avoid deciding the case on constitutional grounds. It would also give effect to the Court's extensive jurisprudence that the legislature is presumed to know the law discussed in *Union Legislative Council v. State*, 145 Wn.2d 544, 40 P. 3d 1276 (2002).

Included in that discussion is the principle that the legislature is presumed to beware of judicial opinions about the law. For the past eighteen years, is the legislature also necessarily to be presumably informed about judicial opinions in the nature of unexploded bombs that could be made anytime but haven't?

May 21, 2007

Respectfully submitted,

FILED AS ATTACHMENT  
TO E-MAIL

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